

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 19 CR 2848 JB

v.

VICTOR KEARNEY,

Defendants.

**DEFENDANT VICTOR KEARNEY'S  
PROPOSED JURY INSTRUCTIONS**

The Defendant Victor Kearney respectfully requests the Court include the following instructions to the jury and requests permission to submit such additional instructions as may become appropriate during trial. Defendant's Proposed Jury Instructions include Pattern Jury Instructions and modifications of the same based on case law and the specific facts of this matter. Defendant renews and does not waive his prior objections and proposed instructions in connection with this Motion to Preserve Right to Jury Trial previously filed in this matter.

8. 10<sup>th</sup> Cir. Pattern Jury Instructions (Criminal) §2.19 [modified];
9. 10<sup>th</sup> Cir. Pattern Jury Instructions (Criminal) §2.93 [modified].

Respectfully submitted:

By: /s/ Paul Linnenburger  
PAUL LINNENBURGER  
Lane + Linnenburger + Lane LLP  
P.O. Box 6622  
Albuquerque, New Mexico 87197  
(505) 226-7979  
Email: paul@attorneyslane.com

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 23<sup>rd</sup> day of February 2023, I filed this pleading electronically through the CM/ECF system, which caused the following counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

Kimberly Brawley  
Sean Sullivan  
United States Attorney's Office  
District of New Mexico  
201 3<sup>rd</sup> Street NW, Suite 900  
Albuquerque, New Mexico 87102

*/s/ Paul Linnenburger*  
Paul Linnenburger

## **DEFENDANT'S PROPOSED INSTRUCTION NO. 8**

Mr. Kearney is charged in count one of the Indictment with a violation of 21 U.S.C. section 7201. This law makes it a crime to conspire to defeat the lawful function of the Internal Revenue Service of the United States.

To find Mr. Kearney guilty of this offense you must be convinced that the government proved each of the following beyond a reasonable doubt:

- First: Mr. Kearney knowingly entered an agreement with another person;
- Second: The agreement was intended to violate the law;
- Third: Mr. Kearney knowingly and voluntarily participated in said agreement and specifically intended to violate the law;
- Fourth: Mr. Kearney and others in the agreement were interdependent; and
- Fifth: Mr. Kearney or others in the agreement engaged in at least one overt act furthering the intent to defraud the IRS.

For purposes of this instruction, fraud is an intentional or deliberate misrepresentation of the truth for the purpose of inducing another in reliance on it to part with a thing of value or to surrender a legal right and to act with an “intent to defraud” means to act knowingly and with the intention or purpose to deceive or cheat someone.

Parties to an agreement are “interdependent” if they intended to act together for their shared mutual benefit within the scope of agreement as charged.

**Source:** 10<sup>th</sup> Cir. Pattern Jury Instructions (Criminal) §2.19 [modified] *United States v. Adkinson*, 158 F.3d 1147 (11<sup>th</sup> Cir. 1998); *United States v. Klein*, 247 F.2d 908 (2<sup>nd</sup> Cir. 1957); *Cheek v. United States*, 498 U.S. 192 (1991).

## **DEFENDANT'S PROPOSED INSTRUCTION NO. 9**

Mr. Kearney is charged in count three of the Indictment with a violation of 21 U.S.C. section 7206(1). This law makes it a crime for anyone to willfully make a false material statement on an income tax return.

To find the defendant guilty of this crime you must be convinced that the government has proved each of the following beyond a reasonable doubt:

First: Mr. Kearney signed an income tax return for the year 2011 that contained a written declaration that it was made under the penalties of perjury;

Second: The 2011 return contained a false statement that underreported the taxable income of Mr. Kearney for that year;

Third: Mr. Kearney knew the report of his taxable income on the 2011 return was false;

Fourth: Mr. Kearney acted willfully;

Fifth: The statement concerned a matter necessary to the correct computation of taxes owed and was capable of influencing the decision of the Internal Revenue Service; and

Sixth: Mr. Kearney filed the 2011 return with the Internal Revenue Service.

For purposes of this instruction, to find Mr. Kearney acted "willfully", you must find that, at the time he signed the return, Mr. Kearney knew it was materially incorrect or in violation of existing tax laws and that he did not have a good faith misunderstanding of the law or a good faith believe that he was not violating the law, regardless of whether or not that you find such a belief was reasonable.

**Source:** 10<sup>th</sup> Cir. Pattern Jury Instructions (Criminal) §2.93 [modified]; *Cheek v. United States*, 498 U.S. 192 (1991); *United States v. Morris*, 20 F.3d 1111 (11<sup>th</sup> Cir. 1994).